

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00081-MR**

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|----------------------------|---|---------------------|
| DEESHUN DADE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| FNU CHURCH, et al., |) | <u>ORDER</u> |
| |) | |
| Defendants. |) | |
| _____ |) | |

THIS MATTER is before the Court on the Plaintiff's pro se "Notice and Motion to Join Party" [Doc. 9].

The pro se Plaintiff filed this action pursuant to 42 U.S.C. § 1983 addressing an incident that allegedly occurred at the Foothills Correctional Institution, where he is presently incarcerated. [Doc. 1]. He filed the Amended Complaint before the original Complaint was reviewed for frivolity. [Doc. 5]. The Plaintiff names as Defendants: FNU Church and FNU Shields, sergeants; and FNU Reyburn, FNU Jones, FNU Hensley, FNU Franklin, FNU Lane, and FNU Freeman, correctional officers. He raises a variety of claims, including a claim that the Defendants used excessive force against him on April 5, 2022. He seeks a declaratory judgment; preliminary and permanent injunctive relief; compensatory, punitive, and nominal damages; costs; a jury

trial; and any other relief that the Court deems just, reasonable, and equitable. [Id. at 8].

The Plaintiff subsequently filed a Notice and Motion to Join Party [Doc. 9] in which he seeks to address administrative exhaustion, and to add Tim Webb, a unit manager, as a Defendant. The Plaintiff also filed a new civil rights case, 1:22-cv-130-MR, that was dismissed as duplicative of the instant action.

The Plaintiff's Notice and Motion to Join Party will be denied because it is vague and conclusory, and it appears to be an attempt to amend the Complaint on a piecemeal basis. The Plaintiff will be granted another opportunity to amend in light of the dismissal of Case No. 1:22-cv-130. Accordingly, the Court will grant the Plaintiff 30 days within which to file a superseding Second Amended Complaint in the instant case, subject to all timeliness and procedural requirements. Should the Plaintiff fail to timely comply with this Order, the Court will proceed to review the Amended Complaint for frivolity.

IV. CONCLUSION

In sum, the Plaintiff will be granted another opportunity to amend the Complaint in the instant case in light of the dismissal of Case No. 1:22-cv-130 as duplicative. The Court will allow the Plaintiff thirty (30) days to file a

superseding Second Amended Complaint, if he so chooses, subject to all timeliness and procedural requirements. Piecemeal amendment will not be permitted. Should Plaintiff fail to timely file a Second Amended Complaint in accordance with this Order, the matter will proceed on the Amended Complaint.

ORDER

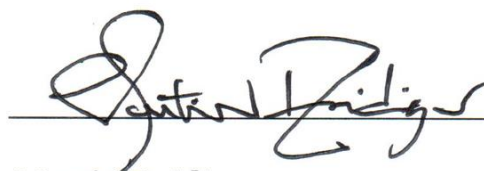
IT IS, THEREFORE, ORDERED that:

1. The Plaintiff's "Notice and Motion to Join Party" [Doc. 9] is construed as a Motion to Amend and is **DENIED**.
2. The Plaintiff shall have thirty (30) days in which to file a superseding Second Amended Complaint in accordance with the terms of this Order. If the Plaintiff fails to comply, the matter will proceed on the Amended Complaint.

The Clerk of Court is respectfully instructed to mail the Plaintiff a blank § 1983 prisoner complaint form and a copy of this Order.

IT IS SO ORDERED.

Signed: August 16, 2022



Martin Reidinger
Chief United States District Judge

